

JUL 31 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

ARMANDO JIMENEZ MENDOZA;
MARIA ESTELA JIMENEZ,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-72916

Agency Nos. A95-391-078
A95-391-079

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006**

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Armando Jimenez Mendoza and Maria Estela Jimenez, husband and wife,
natives and citizens of Mexico, petition for review of the Board of Immigration
Appeals' ("BIA") order denying their motion to reopen removal proceedings. We

* This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *See Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We grant the petition for review and remand for further proceedings.

The BIA denied the motion to reopen because it found that the evidence presented with Petitioners' motion to reopen regarding their son's learning deficiency was previously available and could have been discovered or presented at the former hearing. As the Respondent concedes, the BIA incorrectly determined that the proffered evidence concerned Petitioners' eldest son, whose learning difficulties were raised at the prior hearing, when, in fact, it pertained to their youngest son, for whom no such evidence was presented at the prior hearing. The BIA's failure to conduct a careful review of the evidence constitutes an abuse of discretion. *See Mohammed v. Gonzales*, 400 F.3d 785, 792-93 (9th Cir. 2005) (holding that BIA abused its discretion by issuing a nonsensical and sloppy opinion and by failing to consider all attached evidence). The BIA's additional determination that Petitioners failed to establish the requisite degree of hardship was premised on its misapprehension of the nature of the proffered evidence. We therefore remand for the BIA to reassess the evidence and determine whether, when properly viewed, Petitioners' motion to reopen should be granted.

PETITION FOR REVIEW GRANTED; REMANDED.